

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1289 Session of 2023

INTRODUCED BY FLEMING, N. NELSON, VENKAT, MADDEN, PROBST, RABB, BURGOS, SMITH-WADE-EL, McANDREW, SCHLOSSBERG, SANCHEZ, ROZZI, WARREN, HILL-EVANS, FREEMAN, PARKER, MALAGARI, KRAJEWSKI, KINSEY, CERRATO, HANBIDGE, GREEN AND WEBSTER, JUNE 1, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 27, 2023

AN ACT

1 Amending Title 68 (Real and Personal Property) of the
2 Pennsylvania Consolidated Statutes, in residential real
3 property, providing for ~~discharging~~ REPUDIATION OF
4 discriminatory real estate covenants. <--

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 68 of the Pennsylvania Consolidated
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 74

10 DISCHARGING REPUDIATION OF DISCRIMINATORY <--

11 REAL ESTATE COVENANTS

12 Sec.

13 7401. Scope of chapter.

14 7402. Definitions.

15 7403. Nullification of existing unlawful restrictive covenants.

16 7404. ~~Discharge~~ REPUDIATION of unlawful restrictive covenants. <--

17 7405. Form for ~~discharge~~ REPUDIATION. <--

1 7406. Unlawful restrictive covenants in declarations of common  
2 interest ownership communities.

3 7407. Unlawful restrictive covenants not in declarations of  
4 common interest ownership communities.

5 § 7401. Scope of chapter.

6 This chapter relates to real estate covenants that  
7 discriminate against individuals.

8 § 7402. Definitions.

9 The following words and phrases when used in this chapter  
10 shall have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Board." The executive board or board of directors of a  
13 common interest ownership community.

14 "Common interest ownership community." Includes:

15 (1) A condominium as defined in section 3103 (relating  
16 to definitions).

17 (2) A cooperative as defined in section 4103 (relating  
18 to definitions).

19 (3) A planned community as defined in section 5103  
20 (relating to definitions).

21 "Department." The Department of Community and Economic  
22 Development of the Commonwealth.

23 "Instrument." A deed, mortgage, declaration of restrictive  
24 covenants, conditions or covenants, easement or other similar  
25 document.

26 "Recorder." As follows:

27 (1) A county recorder of deeds or a county official or  
28 department responsible for the recording of documents in a  
29 county without a recorder of deeds.

30 (2) The term includes the Philadelphia Department of

1 Records and the Allegheny County Department of Real Estate.  
2 "Unlawful restrictive covenant." A covenant or other  
3 provision that purports to restrict ownership or occupancy of  
4 real property on the basis of ~~one or more of the following:~~ <--

5 ~~(1) Race, color, ethnicity, national origin, religious~~  
6 ~~creed, sex, gender identity, sexual orientation, age, marital~~  
7 ~~status, familial status, citizenship or immigration status or~~  
8 ~~any other status as those terms are defined in A PRACTICE OR~~ <--  
9 POLICY OF DISCRIMINATION AGAINST INDIVIDUALS OR GROUPS  
10 COVERED UNDER the act of October 27, 1955 (P.L.744, No.222),  
11 known as the Pennsylvania Human Relations Act, or 42 U.S.C.  
12 Ch. 45 (relating to fair housing) or which may hereafter  
13 become a protected class under Federal or State law.

14 ~~(2) The presence of a sensory, mental or physical~~ <--  
15 ~~disability or the use of a guide, service, assistance or~~  
16 ~~support animal as a reasonable accommodation for the user or~~  
17 ~~because the user is a handler or trainer of service, support,~~  
18 ~~assistance or guide animals. THE TERM DOES NOT INCLUDE A~~ <--  
19 COVENANT OR RESTRICTION AFFIXED TO A PROPERTY BY A RELIGIOUS  
20 ORGANIZATION THAT PREVENTS THE USE OF THE PROPERTY FOR  
21 PURPOSES THAT WOULD OFFEND THAT RELIGIOUS ORGANIZATION OR AN  
22 AGE-BASED COVENANT OR RESTRICTION INTENDED TO CREATE A SENIOR  
23 LIVING COMMUNITY.

24 § 7403. Nullification of existing unlawful restrictive  
25 covenants.

26 (a) Unenforceable covenants.--An unlawful restrictive  
27 covenant contained in an instrument affecting title to real  
28 property, whether or not recorded, in this Commonwealth shall be  
29 null, void and unenforceable ab initio without need for further  
30 action by any person or recorder.

1 (b) Combined covenants.--If an unlawful restrictive covenant  
2 is contained in an instrument affecting title to real property  
3 that also contains other covenants or provisions that are not an  
4 unlawful restrictive covenant, the validity and enforceability  
5 of the remaining covenants or provisions, as well as the  
6 validity of the recorded instrument, shall not be affected by  
7 the nullification, voiding and unenforceability of the unlawful  
8 restrictive covenant.

9 § 7404. ~~Discharge~~ REPUDIATION of unlawful restrictive <--  
10 covenants.

11 (a) Landowner ~~discharge~~ MAY FILE FORM.--An owner of real <--  
12 property, including a common interest ownership community, with  
13 an unlawful restrictive covenant recorded in the instrument may  
14 file a form described in section 7405 (relating to form for  
15 ~~discharge~~ REPUDIATION) with the recorder in the county where the <--  
16 real property is located to repudiate the unlawful restrictive  
17 covenant ~~from the instrument.~~ <--

18 (b) Electronic filing.--A form filed under subsection (a)  
19 shall be in writing and may be filed electronically if the  
20 county allows for electronic recording of deeds.

21 (c) Duty of recorder.--The recorder shall record the form  
22 submitted under subsection (a) ~~and, to the extent practicable,~~ <--  
23 ~~notate the indices to the records accordingly to reflect the~~  
24 ~~invalidity of the unlawful restrictive covenant.~~

25 (d) Fees prohibited.--A recorder may not assess a fee for  
26 the filing of a form under this section.

27 (e) Separation of covenant from instrument.--When the form  
28 submitted under subsection (a) is properly recorded, the ~~removal~~ <--  
29 REPUDIATION of the unlawful restrictive covenant is effective <--  
30 and does not affect the validity of the instrument. The

1 instrument shall be construed as if the unlawful restrictive  
2 covenant was never contained in the instrument.

3 § 7405. Form for discharge REPUDIATION. <--

4 (a) Development.--No later than 90 days after the effective  
5 date of this section, the department shall develop and release a  
6 standardized form for landowners or other persons with an  
7 interest in real property to file with the recorder to discharge <--  
8 REPUDIATE an unlawful restrictive covenant within the interested <--  
9 person's instrument.

10 (b) Distribution.--No later than 30 days after the  
11 standardized form required in subsection (a) is approved in  
12 final form by the department, the department shall provide a  
13 "Discharge REPUDIATION of Unlawful Restrictive Covenant" form to <--  
14 each recorder in this Commonwealth and publish the form on the  
15 department's publicly accessible Internet website.

16 § 7406. Unlawful restrictive covenants in declarations of  
17 common interest ownership communities.

18 (a) Board vote for removal.--Notwithstanding any other  
19 provision of law, a board of a common interest ownership  
20 community may, upon receipt of an opinion by independent legal  
21 counsel, consider an unlawful restrictive covenant to be removed <--  
22 as a corrective amendment REPUDIATED by a vote of a majority of <--  
23 the members of the board and without further need for a vote by  
24 unit owners or approval from lenders on individual units,  
25 thereby correcting the declaration by amendment to remove <--  
26 REPUDIATING the unlawful restrictive covenant. <--

27 (b) Unit owner request for removal REPUDIATION.--If a unit <--  
28 owner in a common interest ownership community submits a written  
29 request to the board for an amendment to the declaration to <--  
30 remove TO REPUDIATE an unlawful restrictive covenant, the board <--

1 shall, no later than 90 days after receipt of the request, hold  
2 a meeting to determine whether an unlawful restrictive covenant  
3 exists and should be removed from the declaration by a <--  
4 corrective amendment to the declaration REPUDIATED. If the board <--  
5 finds that an unlawful restrictive covenant exists and should be  
6 removed from the declaration by a corrective amendment to the <--  
7 declaration REPUDIATED, the board shall take swift action to <--  
8 record the ~~corrective amendment~~ REPUDIATION FORM. <--

9 § 7407. Unlawful restrictive covenants not in declarations of  
10 common interest ownership communities.

11 If an instrument in the chain of title to the common elements  
12 in a condominium, in the common facilities or controlled  
13 facilities in a planned community or in the chain of title to a  
14 real estate cooperative includes an unlawful restrictive  
15 covenant, the board may perform a landowner ~~discharge~~ <--  
16 REPUDIATION in accordance with section 7404 (relating to <--  
17 discharge REPUDIATION of unlawful restrictive covenants). <--

18 Section 2. This act shall take effect as follows:

19 (1) The following shall take effect immediately:

20 (i) The addition of 68 Pa.C.S. §§ 7402 and 7403.

21 (ii) This section.

22 (2) The remainder of this act shall take effect in 60  
23 days.